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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 25)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)

MM Docket No. 93-25

Comments of
CENTER FOR MEDIA EDUCATION
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AMERICAN PSYCHOLOGICAL ASSOCIATION
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NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
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NATIONAL WRITERS UNION, LOCAL 1981, UAW
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SELF HELP FOR HARD OF HEARING PEOPLE, INC.
TEACHERS FOR RESISTING UNHEALTHY CHILDREN'S ENTERTAINMENT

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SUMMARY

Direct broadcast satellite service providers should be required to serve the needs of their child audience as part of their public interest obligations under Section 25(a) of the 1992 Cable Act. To this end, the Commission should encourage the provision of children's educational and informational programming through guidelines for DBS providers and should place limitations on advertising during children's programming on DBS.

At a minimum, the guidelines should encourage DBS providers to use 3% of their channel capacity to provide children's educational and informational programming. This amount of programming is equivalent to the three hours per week per channel expected of conventional television broadcasters. Guidelines are necessary to ensure that children's needs are adequately addressed by DBS services, because, as in the case of conventional broadcasting, market forces will not produce an adequate amount of children's educational programming. Unless the Commission acts, it is likely that only a minimal amount of children's educational and informational programming will be provided on DBS services.

Additionally, because children do not differentiate well between advertising and programming they need to be protected from commercial exploitation. The Commission should discourage overcommercialization of children's programming on DBS by limiting the amount of time devoted to commercials during children's programming and by prohibiting harmful advertising practices such as program length commercials and host-selling.

The commercial length and programming guidelines should apply to all DBS operations, whether operating under Part 100 or Part 25, since children watch both and do not draw any distinctions between the two types of services. To provide an incentive for compliance, the Commission should develop a streamlined license renewal process for those

DBS services that meet the guidelines. The Commission should also implement regular reporting and complaint procedures to monitor compliance with the guidelines. By enacting guidelines and carrying out such enforcement mechanisms, the Commission can help ensure that the specific educational and informational programming needs of children are satisfied and that children are protected from the harmful effects of overcommercialization.

TABLE OF CONTENTS

INTRODUCTION	1
I. DBS PROVIDERS SHOULD BE SUBJECT TO THE SAME GUIDELINES AS CONVENTIONAL BROADCASTERS WITH RESPECT TO CHILDREN'S EDUCATIONAL AND INFORMATIONAL PROGRAMMING	4
A. There Are Strong Public Policy Reasons For Adopting Guidelines Concerning Provision of Children's Educational and Informational Programming on DBS Services	5
B. The Commission Should Devise "Safe Harbor" Guidelines Encouraging DBS Services to Provide Children's Educational and Informational Programming Equivalent to At Least Three Hours Per Week Per Channel Offered	7
II. COMMERCIAL ADVERTISING SHOULD BE LIMITED DURING CHILDREN'S PROGRAMMING PROVIDED BY DBS SERVICES	10
III. THE PUBLIC INTEREST OBLIGATIONS OF SECTION 25(A) ARE APPLICABLE TO ALL DIRECT BROADCAST SATELLITE SERVICES	12
IV. THE COMMISSION SHOULD DEVELOP EFFECTIVE MECHANISMS TO ENFORCE THESE PUBLIC INTEREST OBLIGATIONS	15
CONCLUSION	17

INTRODUCTION

The Center for Media Education, Peggy Charren, American Association of School Administrators, American Psychological Association, Association of Independent Video and Filmmakers, Benton Foundation, Center for Science in the Public Interest, Children's Defense Fund, Community Technology Centers' Network, Consumer Federation of America, National Alliance for Non-violent Programming, National Association for Family and Community Education, National Association of Elementary School Principals, National Association of School Psychologists, National Writers Union, Local 1981, UAW, Public Access Corporation of the District of Columbia, Self Help for Hard of Hearing People, Inc., Teachers for Resisting Unhealthy Children's Entertainment ("*CME et al.*")¹ respectfully submit these comments in response to the *Public Notice*² ("*Notice*") concerning implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992³ ("1992 Cable Act") which imposes public interest obligations on direct broadcast satellite ("DBS") services. In the *Notice*, the Federal Communications Commission ("Commission") requests new and revised comments to update the record since the original *Notice of Proposed Rulemaking*⁴

¹ For a description of each organization, see Appendix.

² *Public Notice, Comments Sought in DBS Public Interest Rulemaking*, MM Docket No. 93-25, FCC 97-24 (Released Jan. 31, 1997)[hereinafter *Notice*].

³ 47 U.S.C. §335.

⁴ *Notice of Proposed Rulemaking, In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 93-25, FCC 93-91 (Released Mar. 2, 1993)[hereinafter *NPRM*].

("NPRM") was first issued in 1993.

Back in 1993, the Commission tentatively concluded that because DBS was a new service, it should impose only the minimal public interest requirements of the 1992 Cable Act.⁵ However, as the Commission more recently noted, the DBS industry has "grown and changed dramatically"⁶ since this proceeding was first initiated. In the four years since the original *NPRM* was released, DBS services have increased in both number⁷ and capacity.⁸ Additionally, DBS services have firmly established themselves in the multichannel video programming marketplace with well over three million subscribers.⁹ In light of the growth in capacity and the market stability now evident in the DBS industry, it is now appropriate for the Commission to now impose additional public interest obligations on DBS providers.

⁵ *Id.* ¶29.

⁶ *Notice, supra* note 2, at 1.

⁷ In 1993, PrimeStar was the only operational DBS service. *See generally NPRM, supra* note 4, ¶3 (stating no DBS services under Part 100 were operational at the time *NPRM* was released); *Id.* ¶11 (stating PrimeStar was the only Part 25 DBS service in operation at that time). Today, there are five operational services: AlphaStar, EchoStar, DirecTV, PrimeStar, and USSB. *See generally* Albert B. Crenshaw, *Satellite TV Services: Choices Can Be Numbing*, WASH POST, Nov. 24, 1996, at H1. Additionally, MCI/ASkyB plans to be in operation by the end of 1997. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report*, FCC 96-496, ¶42 (Released Jan. 2, 1997)[hereinafter *Annual Report 3d*](citing *ASkyB, More Than a Year Away From Launch, Seeks Receiver Supplier*, SkyREPORT Headline News, <http://www.skyreport.com/109sky.htm>, Oct. 9, 1996).

⁸ For example, PrimeStar offered only 11 video programming channels in 1993. *NPRM* ¶11. Today, PrimeStar offers 95 video channels, and plans to switch satellites to increase its capacity to over 200 channels. <http://www.dbs-online.com/DBS/Primestar/Packages.html>, viewed on Mar. 10, 1997.

⁹ *Annual Report 3d, supra* note 7, ¶39 ("As of the end of October 1996, there were 3.82 million subscribers.")

CME *et al.* believe that the public interest obligations of DBS providers must include serving the needs of children through the provision of children's educational and informational programming and the imposition of commercial advertising limits. These public interest obligations addressing the needs of children are proposed under Section 25(a) as separate and distinct from the 4-7% channel set aside required under Section 25(b). While Section 25(b) calls for reserving channels for noncommercial educational and informational programming, it is not specifically oriented to serving the needs of the child audience.

To accomplish this goal, CME *et al.* urge the Commission to take the following actions. First, the Commission should establish a "safe harbor" in which a DBS provider can be assured that it is meeting its public interest obligations with regard to its child audience similar to the one recently established for conventional television broadcasters.¹⁰ Second, the Commission should apply to DBS the rules and policies concerning commercial advertising that currently apply to children's television programming on conventional broadcast television and cable.¹¹ Third, the Commission should ensure that these Section 25(a) public interest

¹⁰ 47 C.F.R. §§73.671-73. *See also Policies and Rules Concerning Children's Television Programming and Revision of Programming Policies for Television Broadcast Stations*, 11 FCC Rcd 10660 (1996)[hereinafter *1996 Children's Programming Rules*](clarifying the educational and informational guidelines for the television industry by stating that any station that offers, on average, three hours of qualifying programming per week would receive staff-level approval upon license renewal).

¹¹ 47 C.F.R. §73.670. *See also Policies and Rules Concerning Children's Television Programming*, 6 FCC Rcd 2111 (1991)[hereinafter *1991 Children's Television Rules*](enacting advertising time limits during children's programming); *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974), 55 FCC 2d 691 (1975), *aff'd*, ACT v. FCC, 564 F.2d 458 (D.C. Cir. 1977)[hereinafter *1974 Policy Statement*](prohibiting "host-selling" and "lead-in/lead-out" advertising during children's programming, and requiring adequate separation between commercial and program matter).

requirements are applied to all DBS providers. Finally, the Commission should develop reporting requirements as enforcement mechanisms to ensure compliance with these public interest obligations.

I. DBS PROVIDERS SHOULD BE SUBJECT TO THE SAME GUIDELINES AS CONVENTIONAL BROADCASTERS WITH RESPECT TO CHILDREN'S EDUCATIONAL AND INFORMATIONAL PROGRAMMING

Congress gave the Commission the power to impose upon DBS providers "public interest or other requirements for providing video programming."¹² Both conventional broadcasters and DBS providers are allowed exclusive use of specific portions of the radio spectrum to deliver video programming to the public. In return for this benefit, they must act as public fiduciaries and serve the public interest.¹³ The *1996 Children's Programming Rules* make clear that the public interest obligations of conventional broadcasters include provision of a certain amount of educational and informational programming specifically designed for children. Since DBS providers are subject to the same spectrum limitations as conventional broadcasters, they should be subject to regulations similar to those applicable to conventional broadcasters.

The strong public policies that support the obligation of conventional broadcasters to provide children's educational and informational programming are fully applicable to DBS services. To address these issues, the Commission should adopt "safe harbor" processing guidelines for DBS services similar to those implemented for conventional broadcast services.

¹² 47 U.S.C. §335(a).

¹³ See generally *Time Warner v. FCC*, 93 F.3d 957 (D.C. Cir. 1996).

A. There Are Strong Public Policy Reasons For Adopting Guidelines Concerning Provision of Children's Educational and Informational Programming on DBS Services

Unless guidelines such as the *1996 Children's Programming Rules* are enacted for DBS service providers, it is likely that only a minimal amount of children's educational programming will be provided on DBS services. The same market disincentives that the *1996 Children's Programming Rules* were implemented to address¹⁴ also exist within the DBS industry. DBS services rely on revenue produced from the sale of commercial air-time in addition to the subscription fees charged to their customers. As in conventional broadcasting, DBS programming is designed to attract the largest audiences, and thus, programming producing the highest advertising revenue are favored over programs, such as children's educational and informational programs, aimed specifically to smaller audiences with limited purchasing power. To counter these market disincentives, the Commission should encourage the provision of children's educational and informational programming by providing "safe harbor" processing guidelines, similar to the "safe harbor" for conventional broadcasters.

Because of the important role television plays in the development of children, the Commission should encourage the provision of children's educational and informational programming by DBS operators. As discussed at length in the *1996 Children's Programming*

¹⁴ See generally *1996 Children's Programming Rules*, *supra* note 10, ¶¶29-34 (for a discussion of the market disincentives for commercial broadcasters with respect to children's educational and informational programming).

Rules, television can benefit society by helping to educate and inform our children.¹⁵

Television reaches children earlier and for more hours each day than any other educational influence except perhaps the family.¹⁶ Many children watch television before they are exposed to any formal education.¹⁷ Studies confirm that children can benefit substantially from viewing educational television.¹⁸ For example, one study cited in the *1996 Children's Programming Rules* demonstrated that children who frequently watch "Sesame Street" and other educational programs from ages two to four perform better on vocabulary, school readiness, pre-reading, and math tests than non-viewers as much as three years later.¹⁹ Additionally, studies show that a large percentage of children watch educational programming when it is made available.²⁰ Because educational and informational programming strongly benefits children, the Commission should include the provision of such programming within the public interest obligations of DBS providers.

The technological limitations of DBS also necessitate a children's educational and informational programming requirement to fulfill the purposes of the Children's Television

¹⁵ *Id.* ¶¶9-13 (discussing the importance of children's educational television). *See also* Pub.L. 101-437 §§ 101(1)-101(4)(providing Congressional findings concerning impact of television on children).

¹⁶ *1996 Children's Programming Rules*, *supra* note 10, ¶12.

¹⁷ *Id.*

¹⁸ *Id.* ¶10.

¹⁹ *Id.* (citing Comments of Althea C. Houston and John C. Wright, at 3).

²⁰ *Id.* ¶13.

Act. Because DBS does not currently provide local broadcast affiliates,²¹ households with DBS only will not have access to the children's educational programming of local broadcast licensees. To receive the children's educational and informational programming of local broadcasters, DBS subscribers will need to use a traditional antenna, assuming that they can receive over the air broadcasting, or incur the additional cost of a subscription to cable.

Even if a DBS household goes to the trouble of obtaining local broadcast channels, or if DBS services are able to transmit local broadcast channels in the future, this does not obviate the public interest responsibility of DBS providers to serve the child audience. DBS providers have an obligation to serve the public, independent of the public interest obligations of conventional broadcasters. Moreover, DBS providers are able to do far more for children than was possible with just one channel because of their increased capacity. Accordingly, the Commission should require DBS providers to offer programming serving children's educational and informational needs regardless of what is being broadcast by local licensees.

B. The Commission Should Devise "Safe Harbor" Guidelines Encouraging DBS Services to Provide Children's Educational and Informational Programming Equivalent to At Least Three Hours Per Week Per Channel Offered

CME *et al.* recommend that any DBS service provider that offers an average of at least three hours per week of children's educational and informational programming per channel

²¹ Jim McConville & Harry A. Jerrell, *Competition From the Sky*, BROADCASTING AND CABLE, Nov. 25, 1996, at 25. (Due to the limited spectrum and the national audience of DBS, it is not feasible to provide carriage of all local broadcast stations.) *But see* David Lieberman, *Murdoch Plan Signals Issues for Regulators*, USA TODAY, Mar. 5, 1996, at B-1 (If News Corp.'s planned takeover of EchoStar goes through, ASkyB will use some of its 500 channels to offer limited carriage of broadcast stations on a regional basis.)

during the hours of 8:00AM to 11:00PM EST should fall within a “safe harbor” and receive staff-level processing and review of its public interest obligation to children upon license renewal.²² CME *et al.* advise the adoption of the three hour per week standard because in the *1996 Children’s Programming Rules*, the Commission determined that three hours per week per channel was a reasonable guideline that would not overly burden broadcasters but would encourage them to provide more children’s educational and informational programming.²³ The same standard of an average of three hours per week per channel should also encourage, but not overly burden, DBS providers.

Additionally, the Commission stated that children’s educational and informational programming should be broadcast between the hours of 7:00AM and 10:00PM local time, to ensure it was available when children were likely to be viewing.²⁴ DBS providers should be subject to the same 15 hour window. However, because of the national nature of DBS broadcasting, it is not possible to specify the hours in terms of local time for each time zone. Instead, CME *et al.* believe that provision of children’s educational and informational programming between the hours of 8:00AM to 11:00PM EST would suffice to serve the interests of children.²⁵

²² *1996 Children’s Programming Rules*, *supra* note 10.

²³ *Id.* ¶121.

²⁴ *Id.* ¶97.

²⁵ The 8:00AM to 11:00PM EST window is suggested because it provides reasonable access to the programming for a majority of the population. Granted, children in the Pacific time zone may have programs broadcast as early as 5:00AM, but recording technology could be employed to minimize the impact. Other implementations may be suitable, as long as the likelihood that a significant number of children are in the viewing audience is not diminished.

There are a number of ways in which a DBS provider could demonstrate that it fell within the safe harbor. For example, the safe harbor could be met if each programming channel on a DBS service provided a minimum of three hours of children's educational and informational programming each week.²⁶ Alternatively, DBS service providers could spread the required programming over several channels, in varying amounts, as long as the total was equivalent to at least three hours per channel, per week. Finally, DBS service providers could meet the safe harbor requirements by providing separate programming channels which would be used primarily to broadcast children's educational and informational programming. Under this option, a DBS provider would use 3% of its overall channel capacity during the 8:00AM to 11:00PM EST period to provide children's educational and informational channels.²⁷ Three percent of overall channel capacity is roughly equivalent to three hours per week per channel of children's educational and informational programming.²⁸ CME *et al.* believe the latter

²⁶ For example, a DBS service provider who offers 100 channels of video programming would ensure that each channel provides at least three hours per week of children's educational and informational programming, resulting in a total of 300 hours per week. (*100 channels X 3 hours = 300 hours*).

²⁷ For example, a DBS service provider who offers 100 channels of video programming would provide primarily children's educational and informational programming on three separate channels during the 15 hour period from 8:00AM to 11:00PM EST. (*100 channels X 3% = 3 channels*).

²⁸ Three hours per week, per channel is 2.9% of the total channel capacity available during the 15 hour period each week. (*15 hours per day X 7 days per week = 105 programming hours during*, and, *3 hours ÷ 105 hours = 2.9%*). As noted in the *NPRM*, there could be some ambiguity with the term "channel capacity." CME *et al.* propose that channel capacity be defined as the number of video programming channels offered by a DBS service provider. This definition would encompass all video programming services, including the pay per view channels, but exclude non-video services such as audio programming, data delivery and Internet connectivity.

option would best serve the public interest because the concentration of programming on a few discrete channels enables children and parents to find the programming easily. This option would also be easier for DBS operators to manage and would simplify their reporting procedures because, unlike the other options, the programming would not be scattered over numerous channels. However, regardless of the specific implementation plan, the overall number of hours of children's educational and informational programming to satisfy the safe harbor requirements should be at least the equivalent of three hours per week per channel offered by each DBS service provider.

II. COMMERCIAL ADVERTISING SHOULD BE LIMITED DURING CHILDREN'S PROGRAMMING PROVIDED BY DBS SERVICES

In addition to ensuring that children have access to educational and informational programming designed for them, Congress and the Commission have a long history of intervening to protect children from overcommercialization. As early as 1974, the Commission implemented rules requiring adequate separation between commercials and program matter during children's programming,²⁹ and prohibiting advertising practices such as

²⁹ Because children have considerable difficulty distinguishing between commercial matter and program matter the Commission requires broadcasters to provide adequate separation between the two with techniques such as "bumpers" to identify the content more clearly. *1974 Policy Statement*, *supra* note 11, at 15-16.

"host-selling,"³⁰ and program length commercials ("PLC's") aimed at children.³¹

Additionally, in enacting the Children's Television Act, Congress found that children should be protected from commercial exploitation because they do not differentiate well between advertising and programming.³² While Congress found that some advertising was necessary to provide financial support for children's programming, it sought to avoid overcommercialization.³³ Finally, Congress found that the incentives for commercialization of children's programming were great on both over-the-air and cable television services.³⁴ Thus, Congress directed the Commission to adopt rules applicable to both broadcasters and cable operators³⁵ establishing commercial advertising time limits during children's programming.³⁶

The same dangers of overcommercialization and the need for financial support of children's programming also exist on DBS. The solution, commercial advertising limits and

³⁰ Host-selling (using the host or characters from a television program to promote or endorse goods or services during that program) is prohibited during children's programming because such tactics easily confuse children. *Id.*

³¹ PLC's are defined as programs associated with a product in which commercials for that product are aired. 47 C.F.R. §73.760. *See also 1991 Children's Television Rules, supra* note 11, ¶¶44-45 (for a more detailed discussion of host-selling and program length commercials).

³² Pub. L. 101-437, §101(4)(Congressional finding that special safeguards are appropriate to protect children from overcommercialization).

³³ Pub. L. 101-437, §101(3).

³⁴ 136 CONG. REC. S10124 (1990) (statement of Sen. Wirth, describing how the "marketplace has responded by continually increasing the commercial pitches on children's television" as soon as the previous FCC rules imposing limits were rescinded).

³⁵ 47 U.S.C. §303a(d)("As used in this section, the term 'commercial broadcast licensee' includes a cable operator.")

³⁶ 47 C.F.R. §73.760.

guidelines concerning host-selling, adequate separation, and PLC's during children's programming, should be the same as well. Advertising during children's programming on DBS should be limited to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays"³⁷ and should be adequately separated from the program. Additionally, host-selling and PLC's should be prohibited. Because DBS and cable services offer much of the same programming, the proposed advertising limits may well be in effect for a substantial amount of children's programming already provided by DBS services. However, adopting these rules will eliminate uncertainty and will prevent overcommercialization on any children's programming unique to DBS.

III. THE PUBLIC INTEREST OBLIGATIONS OF SECTION 25(A) ARE APPLICABLE TO ALL DIRECT BROADCAST SATELLITE SERVICES

The Commission should impose these public interest obligations on all direct broadcast satellite services operating in the Ku-band, including those distributed via FSS satellites³⁸ and those distributed via DBS satellites.³⁹ In Section 25(a) of the statute, Congress directed the Commission to impose public interest or other obligations on "providers of direct broadcast satellite service" without clearly defining this term.⁴⁰ CME *et al.* agree with the Commission's

³⁷ 47 U.S.C. §303a(b).

³⁸ That is, satellites regulated under 47 C.F.R. Part 25.

³⁹ That is, satellites regulated under 47 C.F.R. Part 100.

⁴⁰ 47 U.S.C. §335(a). Note, that while Congress did provide statutory definitions in Section 25(b)(5), there is some debate as to whether or not those definitions are applicable to Section 25(a). See *NPRM*, *supra* note 4, ¶¶18-19. Additionally, even if the definitions apply, they are still not clear as to which entity is responsible for meeting the public interest obligations. See *NPRM*, *supra* note 4, ¶¶2-6.

tentative conclusion that Congress intended the term to include all services providing direct-to-home delivery of programming in the Ku-band.⁴¹ As discussed below, this conclusion is consistent with both the common usage of the term and with prior definitions employed by the Commission.⁴²

The term "direct broadcast satellite" is commonly used to refer to both DBS-based services such as EchoStar, DirecTV, and USSB, and FSS-based services such as PrimeStar and AlphaStar. In fact from the consumer's point of view there is no difference between the two types of service: they are marketed the same, generally offer the same amount and types of programming, and use similar satellite reception equipment.⁴³ As noted in the *NPRM*, the term DBS has sometimes included FSS satellite services using the C-band for delivery of programming directly to consumers.⁴⁴ However, the term is more commonly limited to

⁴¹ *NPRM*, *supra* note 4, ¶5.

⁴² See generally, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, CC Docket No. 95-185, 1996 WL 452885 (F.C.C.) ¶202 (Released August 8, 1996)(using common dictionary definitions for terms not defined in the statute); *Implementation of the Telecommunications Act of 1996*, 11 FCC Rcd. 12513, 1996 WL 740760 (F.C.C.) ¶35 (Released May 17, 1996)(Pending further rulemaking, the Commission employed definitions from previous Commission rulings when the statute was silent on scope of the terms.)

⁴³ *Annual Report 3d*, *supra* note 7, ¶37. Indeed the only qualitative difference between the FSS-based and DBS-based services is the slightly larger dish required for reception of FSS-based DBS services. *Id.*

⁴⁴ *NPRM*, *supra* note 4, ¶¶3-4 ("The term direct broadcast satellite ("DBS") service originally referred to a [satellite service] regulated under Part 100." However, "[s]ince 1982, the term DBS service has also been used to refer to direct-to-home delivery of programming by fixed-satellite-service ("FSS")" operating in the C-band and Ku-band.)

satellite video programming services operating only in the Ku-band.⁴⁵ Thus, the common usage of the term “provider of direct broadcast satellite” used in Section 25(a) dictates that all direct-to-home satellite services operating in the Ku-band should be required to serve the public interest.

Further support for this interpretation of the scope of the Section 25(a) public interest obligations is found in previous definitions used by the Commission to describe direct broadcast satellite services. The Commission has stated that direct broadcast satellite services are “radiocommunication service[s] in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public.”⁴⁶ It has also stated that “direct broadcast satellite service[s] shall operate in the frequency band 12.2-12.7 GHz,”⁴⁷ which is popularly known as the Ku-band. Although these definitions are found in Part 100 of the Code, there is no reasonable basis to exclude any satellite-based service that meets the two key criteria: 1) direct reception by customer, and 2) operating in the Ku-band. All direct broadcast satellite services discussed above are easily encompassed in this definition. Thus, under both the common usage and the previous definitions, the public interest obligations of Section 25(a)

⁴⁵ See e.g., *Annual Report 3d*, *supra* note 7, ¶37 (FSS-based services using Ku-band included in DBS section because they share many of the same characteristics as DBS-based services and because “consumers and industry participants view their services as close substitutes...”); Crenshaw, *Satellite TV Services: Choices Can Be Numbing*, *supra* note 7, at H4, (discussing PrimeStar and AlphaStar among consumer’s choices for DBS services); McConville & Jerrell, *Competition From the Sky*, *supra* note 21, at 23 (pointing out the technical differences between the two types of services while still grouping them together as DBS services in competition with the cable industry).

⁴⁶ 47 C.F.R. §100.2.

⁴⁷ 47 C.F.R. §100.1.

should be imposed on all direct broadcast satellite services, including FSS and DBS services.

IV. THE COMMISSION SHOULD DEVELOP EFFECTIVE MECHANISMS TO ENFORCE THESE PUBLIC INTEREST OBLIGATIONS

The Commission should develop enforcement mechanisms to ensure that the programming guidelines and commercial limits are met. At a minimum, the enforcement mechanisms should enable concerned members of the public to monitor DBS providers' efforts in meeting the guidelines and to file complaints when the DBS provider falls short. As is required of conventional broadcasters, DBS providers should be required to submit quarterly reports to the Commission describing their efforts to serve the needs of children.⁴⁸ Additionally, as with conventional broadcasters, these reports should be made available for general public inspection.⁴⁹ However, unlike conventional broadcasters who serve a local community, merely providing physical access to the records at the provider's headquarters will not adequately inform the public because DBS services are provided on a regional and national basis. Instead, the DBS provider's quarterly reports should be made available to the general public via electronic means such as the World Wide Web,⁵⁰ and the existence of these reports should be publicized. Such a reporting system will allow maximum public access to the

⁴⁸ 47 C.F.R. §73.3526(a)(iii). The reports should also certify compliance with the advertising limits.

⁴⁹ *Id.*

⁵⁰ Conventional broadcasters are already encouraged to use electronic filing to report their compliance with the guidelines. 47 C.F.R. §73.3526(a)(8)(iii). *See also* FCC web site, http://dettifoss.fcc.gov:8080/prod/kidvid/prod/f398_ef.htm (providing forms and instructions for electronic filing via the world-wide web).

information, without overly burdening the DBS service provider.

Under this enforcement system, members of the public will be able to monitor the reports and register complaints with the Commission in the event that DBS providers do not satisfy their public interest obligations. If such complaints are raised, the Commission could investigate complaints by reviewing the quarterly reports of the DBS providers.⁵¹ If the Commission determines that a DBS service provider is not complying with the guidelines, fines or other administrative sanctions could be imposed. Additionally, any DBS service provider who meets the safe harbor requirements on an on-going basis during the satellite's license term would be entitled to staff-level review during application for the satellite license renewal with respect to this obligation.

Another issue regarding enforcement of these guidelines is identifying the entity responsible for ensuring these public interest obligations are satisfied. CME *et al.* suggest that the Commission place this responsibility on the satellite licensee because it has a direct relationship only with that entity. While the statute is ambiguous regarding with whom the responsibilities lie under Section 25(a),⁵² there are sound policy reasons for assigning this obligation to the satellite licensee. As noted in the *NPRM*, provision of DBS services

⁵¹ In spite of the quarterly reporting requirements, the rules for conventional broadcasting couples the review process only with license renewals. 47 C.F.R. §73.371, note 2. However, because DBS licenses are granted for a period of up to ten years, such enforcement mechanisms are inadequate for ensuring that the on-going needs of children are met.

⁵² As noted earlier, it is not clear whether Congress intended definitions of Section 25(b) to apply to Section 25(a). *See supra* note 40. Even if the definitions do apply, they are still ambiguous with regard to which entity bears ultimate responsibility. *See NPRM, supra* note 4, ¶¶10-17 (for a more detailed discussion of the possible problems with interpreting the statutory language).

"involves a variety of potentially complex interrelationships."⁵³ Because the Commission necessarily has a clear and direct relationship with the licensee, an enforcement mechanism applicable to licensees will be simpler to administer than other mechanisms which depend on tracking complex business relationships. Thus, even in those cases where another entity serves as the actual multichannel video program distributor, if the licensee is held accountable, there is no ambiguity concerning who must ensure the obligations are satisfied. In those cases where the licensee is not the entity that provides the video programming, the licensee would be free to enter into contractual agreements as necessary.⁵⁴ Another benefit to holding the licensee responsible is that it treats all direct-to-home satellite video distribution services on the same basis.

Regardless of the entity to whom the Commission ultimately assigns responsibility, the Commission should implement the reporting and complaints procedures, discussed above, to help ensure effective compliance with the guidelines.

CONCLUSION

The Commission should include service to children as part of the public interest obligations of DBS service providers. Like conventional broadcasters and cable operators, DBS providers have a responsibility to take into account the special nature of their child audience to prevent overcommercialization in their programming. Additionally, like

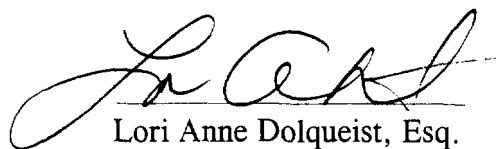
⁵³ *NPRM*, *supra* note 4, ¶6.

⁵⁴ This situation is analogous to holding cable operators responsible for ensuring that commercial limits are not exceeded even though it is the cable networks that control the amount of commercial time. *See 1991 Children's Television Rules*, ¶11.

conventional broadcasters, DBS providers have the power and responsibility to make a significant positive impact on children by providing them with educational and informational programming. By implementing guidelines which encourage educational and informational children's programming and imposing advertising limits the Commission can help safeguard the public interests of children.

These public interest obligations apply to all providers of direct broadcast service, which as discussed above, should include both FSS and DBS services. Finally, the Commission's enforcement mechanisms should provide a means to evaluate on-going compliance in addition to streamlining of the license renewal process for licensees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. A. Dolqueist', written over a horizontal line.

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APPENDIX

Description of Organizations

CENTER FOR MEDIA EDUCATION

The Center for Media Education (CME) is a national non-profit organization dedicated to improving the quality of the electronic media. CME fosters telecommunications policymaking in the public interest through its research, advocacy, public education, and press activities. Founded in 1991, to carry on the work of Action for Children's Television, CME's primary focus is children. At the national and state levels, CME is working with education, library and child advocacy organizations to expand the access of poor and minority children to new educational technologies in school and at home. CME is partnering with several state child advocacy groups in campaigns to promote telecommunications policies on behalf of children and disadvantaged families.

PEGGY CHARREN

Peggy Charren is the founder of Action for Children's Television (ACT) and a consultant on children's media.

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

The American Association of School Administrators (AASA), founded in 1865, is the professional organization for over 16,500 educational leaders across North America and in many other countries. The AASA is one of elementary and secondary education's longstanding professional organizations. The four major focus areas for AASA are: (1) improving the condition of children and youth; (2) preparing schools and school systems for the 21st century; (3) connecting schools and communities; and (4) enhancing the quality and effectiveness of school leaders.

AMERICAN PSYCHOLOGICAL ASSOCIATION

The American Psychological Association (APA) is the largest scientific and professional organization representing psychology in the United States with membership that includes more than 151,000 members and affiliates. Many of our members have a long history of involvement in social policy that affects children, youth, and families.

AMERICAN ASSOCIATION OF INDEPENDENT VIDEO AND FILMMAKERS

The American Association of Independent Video and Filmmakers is a 5,000 member information, resource and advisory organization for the independent media field.

BENTON FOUNDATION

The Benton Foundation believes that communications in the public interest, including the effort to connect all Americans to basic communications systems, is essential to a strong democracy. Benton's mission is to realize the social benefits made possible by the public interest use of communications. Benton bridges the worlds of philanthropy, community practice, and public policy. It develops and provides effective information and communication tools and strategies to equip and engage individuals and organizations in the emerging digital communications environment.

The Benton Foundation's Communications Policy Project is a nonpartisan initiative to strengthen public interest efforts in shaping the emerging National Information Infrastructure (NII). It is Benton's conviction that the vigorous participation of the nonprofit sector in policy debates, regulatory processes and demonstration projects will help realize the public interest potential of the NII. Current emphases of Benton's research include extending universal service in the digital age; the future of public service in the new media environment; the implications of new networking tools for civic participation and public dialogue; the roles of states as laboratories for policy development; and the ways in which noncommercial applications and services are being developed through new telecommunications and information tools.

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

The Center for Science in the Public Interest (CSPI) is a nonprofit education and advocacy organization that focuses on improving the safety and nutritional quality of our food supply and on reducing the carnage caused by alcoholic beverages. CSPI seeks to promote health through educating the public about nutrition and alcohol; it represents citizens' interests before legislative, regulatory, and judicial bodies; and it works to ensure that advances in science are used for the public good.

CHILDREN'S DEFENSE FUND

The Children's Defense Fund (CDF) exists to provide a strong and effective voice for all the children of America, who cannot vote, lobby, or speak for themselves. CDF pays particular attention to the needs of poor and minority children and those with disabilities. The goal of CDF is to educate the nation about the needs of children and encourage preventive investment in children before they get sick, drop out of school, suffer family breakdown, or get into trouble.

CDF focuses on programs and policies that affect large numbers of children, rather than on helping families on a case-by-case basis. CDF gathers data and disseminates information on key issues affecting children. CDF monitors the development and implementation of federal and state policies. CDF provides information, technical assistance, and support to a network of state and local child advocates, service providers, and public and private-sector officials and leaders. CDF pursues and annual agenda in the U.S. Congress and in states where it has offices. CDF educates hundreds of thousands of citizens annually about children's needs and responsible options for meeting those needs.

CDF is a national organization with roots in communities across America. CDF maintains state offices in Minnesota and Ohio; local project offices in Marlboro County (South Carolina), Columbus, Greater Cincinnati, and New York City; and a Black Community Crusade for Children (BCCC) southern regional office in Jackson, Mississippi. CDF has developed cooperative projects with groups in many states.

COMMUNITY TECHNOLOGY CENTERS' NETWORK

The Community Technology Centers' Network is a support project for two hundred community organizations developing technology access programs for those ordinarily disenfranchised from telecommunications access and resources.

CONSUMER FEDERATION OF AMERICA

The Consumer Federation of America is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education.

NATIONAL ALLIANCE FOR NON-VIOLENT PROGRAMMING

The National Alliance for Non-Violent Programming (NANP) is a network of ten national and international organizations building and supporting community initiatives to reduce the incidence and impact of media violence through community action, informed advocacy, and educational strategies promoting media literacy. NANP's member organizations include 3,300 chapters with more than two million members.

NATIONAL ASSOCIATION FOR FAMILY AND COMMUNITY EDUCATION

The National Association for Family and Community Education is made up of 40,000 volunteers across the nation providing opportunities for leadership development, education and resources to strengthen families. Current goals include the promotion of better programming on television and other media for children.

NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS

The National Association of Elementary School Principals is a professional organization serving 27,000 K-8 principals nationwide and overseas.

NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS

The National Association of School Psychologists (NASP) represents more than 24,000 school psychologists and related practitioners who serve the education and mental health needs of children, adolescents, young adults, and families. NASP serves its members and society by promoting the rights, welfare, education and mental health of children and youth and advancing the profession of school psychology.